

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 147**

[CGD08-03-040]

RIN 1625-AA79

Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico for Garden Banks 783**AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around a petroleum and gas production facility in Garden Banks 783 "A" of the Outer Continental Shelf in the Gulf of Mexico while the facility is being constructed and after the construction is completed. The construction site and facility need to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this area will significantly reduce the threat of allisions, oil spills and releases of natural gas. This rule prohibits all vessels from entering or remaining in the specified area around the facility's location except for attending vessels, vessels under 100 feet in length overall not engaged in towing and vessels authorized by the Eighth Coast Guard District Commander.

DATES: This final rule is effective May 17, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08-03-040] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Kevin Lynn, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589-6271.

SUPPLEMENTARY INFORMATION:**Regulatory History**

On January 20, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico for Garden Banks 783" in the **Federal Register** (69 FR 2691). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing a safety zone around a petroleum and gas production facility in the Gulf of Mexico: Magnolia Tension Leg Platform (TLP), Garden Banks 783 "A" (GB 783 "A"), located at position 27°12'13.86" N, 92°12'09.36" W. This safety zone will be in effect while the facility is being constructed and after the construction is completed.

This safety zone is in the deepwater area of the Gulf of Mexico. For the purposes of this regulation it is considered to be in waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area of the Gulf of Mexico also includes an extensive system of fairways. The fairway nearest the safety zone is the Gulf Safety Fairway—Aransas Pass Safety Fairway to Southwest Pass Safety Fairway. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

ConocoPhillips requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the Magnolia TLP construction site and for the zone to remain in effect after construction is completed.

The request for the safety zone was made due to the high level of shipping activity around the site of the facility, safety concerns for the integrity of the structure, and the environment. ConocoPhillips indicated that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility during and after construction would result in a catastrophic event.

The Coast Guard has evaluated ConocoPhillips's information and concerns against Eighth Coast Guard District criteria developed to determine if an Outer Continental Shelf facility qualifies for a safety zone. Several factors were considered to determine the necessity of a safety zone for the Magnolia TLP construction site and for a safety zone to remain in effect after the facility is completed: (1) The construction site is located approximately 39 nautical miles south of the Gulf Safety Fairway—Aransas Pass Safety Fairway to Southwest Pass

Safety Fairway; (2) the facility will have a high daily production capacity of petroleum oil and gas; (3) the facility will be manned; and (4) the facility will be a tension leg platform.

We conclude that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident during and following the construction of Magnolia TLP warrants the establishment of this safety zone. This regulation will significantly reduce the threat of allisions, oil spills and natural gas releases and increases the safety of life, property, and the environment in the Gulf of Mexico. This regulation is issued pursuant to 14 U.S.C. 85 and 43 U.S.C. 1333 as set out in the authority citation for 33 CFR part 147.

Discussion of Comments and Changes

We received no comments on the proposed rule. Therefore, we have not made any change in the final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. The impacts on routine navigation are expected to be minimal because the safety zone will not overlap any of the safety fairways within the Gulf of Mexico.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Since the construction site for the Magnolia TLP is located far offshore, few privately owned fishing vessels and recreational boats/yachts operate in the

area. This rule will not impact an attending vessel or vessels less than 100 feet in length overall not engaged in towing. Alternate routes are available for all other vessels impacted by this rule. Use of an alternate route may cause a vessel to incur a delay of four to ten minutes in arriving at their destinations depending on how fast the vessel is traveling. Therefore, the Coast Guard expects the impact of this regulation on small entities to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that Order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in

complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.835 to read as follows:

§ 147.835 Magnolia TLP Safety Zone.

(a) *Description.* Magnolia TLP, Garden Banks 783 “A” (GB 783 “A”), located at position 27°12'13.86" N, 92°12'09.36" W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone. These coordinates are based upon [NAD 83].

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

- (1) An attending vessel;
- (2) A vessel under 100 feet in length overall not engaged in towing; or
- (3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: April 5, 2004.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

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BILLING CODE 4910–15–P